IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2487 OF 2005

Amanna A. Alfred ... Petitioner

V/s.

Mahanagar Telephone Nigam Ltd. ... Respondent

Mr. R.V. Govilkar for the petitioner.

Ms. S.I. Shah for the respondent.

CORAM : F.I. REBELLO &
ANOOP V. MOHTA,JJ.

DATED : 28th November, 2006

P.C.

. Rule. Heard forthwith.

2. The petitioner is aggrieved by the award made under Section 7B of the Indian Telegraphic Act, 1885 dated 19th January, 2005. It is the case of the petitioner that earlier he had been given service accommodation at 19 August Kranti, Chowpatty, Mumbai 400 003. The petitioner had availed telephone facility from the respondent and initially the phone number was 3619545. Said facility was without STD facility. The petitioner retired on 29.09.1990 and on 13.07.1991 shifted to the premises at Vasai at Shree Krishna Housing Complex, which he had purchased in the

year 1988. Before shifting to Vasai, the petitioner had surrendered the telephone. It is, however, the grievance of the petitioner that the officers of the respondent had played mischief in-as-much as instead of obtaining his signature on the surrender form, his signature was obtained on the shifting form and got signed by the respondent. This was not known to the petitioner, who was under bonafide impression that he had surrendered telephone in favour of respondents after he shifted to Vasai.

. From the record produced during the arbitration proceeding, it was revealed that the phone was first shifted from Omega Building, where the petitioner was residing to Meher Building. The respondent issued work order for shifting the aforesaid telephone and on 05.08.1991 reconnected STD when there was no STD facility opted by the petitioner. On 16.08.1991 and 17.08.1995 the phone was shifted from Omega Building to Meher Building. The record would shows that on 09.12.1991, the telephone was shifted from Amar Jyoti to Meher Building. The record also would show that notices were issued to the petitioner on 24.02.1994, 15.07.1994 and 11.08.1994. The petitioner had not

received the same as he had shifted to Vasai. On 28.02.1994 and 21.08.1995 a person came from the Department to enquire about the unpaid bills dated 15.06.1993 and 15.08.1993 for a sum of Rs.2,99,052/-. The petitioner was shocked to receive such bills that too despite surrender of phone in 1991. The petitioner, thereafter, made correspondence with the department and explained the circumstances. After the enquiry, the petitioner was called upon to pay said bills. It is not necessary to refer to all other proceedings. Suffice it to say that the matter was referred to arbitration, where the impugned award came to be passed.

3. The learned counsel for the petitioner has drawn our attention to a judgment of the Supreme Court in **M.L. Jaggi V/s. Mahanagar Telephones Nigam Ltd, AIR 1996 Supreme Court 2476** to point out, that the only remedy available to the petitioner against an award under Section 7B is to challenge the same under Article 226 of the Constitution of India.

4. The question is whether the impugned award is liable to be set aside. In the first instance, there is no finding recorded as to whether the petitioner

before his shifting was enjoying facility of STD or if the STD was connected only after the shifting of the premises. Thus considering the petitioner's contention that he had shifted from Omega Building to Vasai subsequent to his retirement, who has paid bills between the period would also be evidence available with the respondents. Other aspect of the matter is that, there is nothing to show that the notices addressed by the respondent to the petitioner were served on the petitioner.

. In our opinion, though the learned Arbitrator has recorded a finding that the petitioner was not an illiterate person and that he would know the difference between surrender form and shifting form, yet, considering the documents in the possession of the respondents and which have not been considered, it would be appropriate that the impugned order is set aside and matter is remanded back to the Arbitrator for reconsideration according to law and after giving the petitioner further opportunity of calling for and making available to him the documents which he may call for. With the above observation, the award is set aside and the matter is remanded back to the the same Arbitrator if available or not to another

Arbitrator for deciding the matter in terms of what we have stated.

5. Rule made absolute accordingly. There shall be no order as to costs.

[F.I. REBELLO, J.]

[ANOOP V. MOHTA, J.]